

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

**NOT FOR PUBLICATION**

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In re

Amie L. Burkley  
Matthew L. Burkley

OPINION AND ORDER

Case No. 12-11978 K

Debtors  
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On June 26, 2012, this Court entered two Orders in connection with the Debtors' application for waiver of the Chapter 7 filing fee. One of the Orders set the matter down for hearing at 10:00 a.m. July 11, 2012. On July 10, 2012, the Court received an unsworn "explanation" purportedly from Amie Burkley, which also appended a revised answer to the first question on the Statement of Financial Affairs, and a revised Schedule A.

The Debtors did not appear before the Court on July 11. Attorney Brendan Hand appeared in case either the Debtors or the Court required his assistance.

The Court took the matter under submission.

The following constitutes the Court's decision regarding the application to waive the Chapter 7 filing fee.

First, the Debtors' letter states that the Debtors do not know why they had to file a new case rather than simply converting their prior Chapter 13 case to a Chapter 7. The answer to that question is this: When Mr. Hand's Motion to Convert the case from Chapter 13 to 7 was presented to this Court, it was pointed out to him that the Debtors could not receive a Chapter 7 discharge if their prior Chapter 13 case were converted to Chapter 7, because they received a Chapter 7 discharge in an earlier case that was filed less than eight years before their Chapter 13 case was filed. Filing a new case would be outside the eight year limitation and would enable

them to receive a Chapter 7 discharge. Consequently, he withdrew the request to convert the Chapter 13 case to Chapter 7.

Second, the Debtors' letter asks "Why are we refiling at all? Why were we dismissed in the first place?". Attached is a copy of a letter from Mr. Hand to the Office of the Bankruptcy Court Clerk dated June 12, 2012, which the Debtors signed, requesting dismissal of the Chapter 13 so that they could re-file in a Chapter 7.

Third, until providing an amended Schedule A along with the letter received on July 10, 2012, no mention was made in anything submitted to this Court either in the Chapter 13 case or the present Chapter 7 case of the fact that the Debtors own the real property at 7360 Goodrich Road, Clarence Center, New York. The only real estate that the Debtors have claimed to own is property in West Seneca that is in foreclosure. It appears that they somehow acquired the Clarence Center property while their Chapter 13 case was pending. In their most recent submission they assert that the property has a value of \$160,000 and that there is a mortgage of \$159,000 against it. There is no explanation as to how the Debtors acquired the property and incurred the mortgage loan while their Chapter 13 case was pending, without the permission of the Chapter 13 Trustee.

All of that said, the Debtors appear to be eligible for fee waiver if it is true that their gross family income is approximately \$54,000 per year, because after deducting income taxes and health insurance, their net income appears to be less than \$44,985, which amount is 150% of HHS Poverty Guidelines for a family of six.

Consequently, the Court will waive the filing fee except for the portion of the fee to be disbursed to the case trustee. The Debtors must pay to the Clerk of Court \$60 on or before August 10, 2012.

SO ORDERED.

Dated: Buffalo, New York  
July 16, 2012

s/Michael J. Kaplan

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U.S.B.J.